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In re Application of :
Grech et al. :
Application No.: 10/540,006 :
PCT No.: PCT/US03/38021 :
Int. Filing Date: 26 November 2003 : **DECISION**
Priority Date: 30 November 2002 :
Attorney Docket No.: 4623C-083/NPB :
For: Reduced Water Consumption Flush Toilet :

This is in response to the renewed submission under 37 CFR 1.497(d) filed on 14 November 2006.

DISCUSSION

In a Decision mailed on 21 September 2006, the correspondence filed on 21 July 2006 was treated under 37 CFR 1.497(d). The declarations of the inventors filed on 21 July 2006 were not accepted, without prejudice, because

Regarding requirement (1), applicants have provided appropriate statements by Kim Keith and Greg Exner, but no statement by Brian Kelly has been furnished. Accordingly, requirement (1) has not been satisfied.

Regarding requirement (3), the "Written Consent By Assignee Under 37 CFR §1.48(a)(5)" document included among the instant correspondence is signed on behalf of THETFORD CORPORATION by Greg Exner in his capacity as "Vice President of Global Engineering"... the instant "Written Consent By Assignee..." does not satisfy 37 CFR 3.73(b)(1) because it is not accompanied by documentary evidence of a chain of title (and a request to record it) or by a statement specifying the reel and frame number where such documentation may be found in the records of the USPTO. Therefore, requirement (3) has not been satisfied. Based on the totality of the evidence of record, it would not be appropriate to conclude that the requirements of 37 CFR 1.497(d) have been satisfied.

Inspection of the declaration documents filed on 21 July 2006 reveals that they appear to have been assembled by aggregating individual sheets signed by each of the inventors into two composite documents (each of which names a different inventive entity). Since counsel has not provided copies of the complete declaration documents signed by each inventor, it is not clear that each inventor had the benefit of signing a complete copy of the declaration document, naming the proper inventive entity. Therefore, it would not be appropriate to grant the requested relief at this time. Counsel is required to furnish a complete declaration, as signed by the inventors, nominating the complete and correct inventive entity. It is noted that one of the declaration documents filed on 21 July 2006 lists deleted inventors Keith and Exner and does not list added inventor Kelly. The other declaration filed on 21 July 2006 does list an inventive entity including the

inventors nominated on the published international application, except for Keith and Exner, and also includes Kelly. However, said document is defective for the other reasons noted herein.

In response, counsel has provided a statement by Brian Kelly that "through error I was inadvertently excluded from being named as an inventor in the above-referenced patent application and that the error in inventorship occurred without deceptive intent on my part." Therefore, requirement (1) has now been satisfied.

Counsel has also furnished a "Written Consent By Assignee..." signed on behalf of THETFORD CORPORATION by Greg Exner in the capacity of Vice President of Global Engineering, and explicitly stating that Mr. Exner is "authorized to act on behalf of the Assignee." The "Written Consent By Assignee..." identifies the reel and frame numbers where assignment documents were recorded with the USPTO. This document satisfies requirement (3).

Inspection of the declaration accompanying the instant renewed submission under 37 CFR 1.497(d) reveals that it nominates "Michael Harris" in place of "HARRIS, Mike" who is nominated in the published international application. MPEP 605.04(b) states in part that

Except for correction of a typographical or transliteration error in the spelling of an inventor's name, a request to have the name changed from the typewritten version to the signed version or any other corrections in the name of the inventor(s) will not be entertained, unless accompanied by a petition under 37 CFR 1.182 together with an appropriate petition fee.

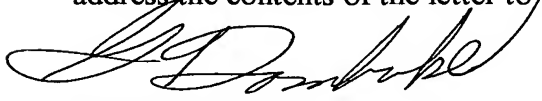
Since change described above represents more than a mere typographic error or phonetic misspelling of applicant's name, a petition (and fee) under 37 CFR 1.182 is required. *See also* MPEP § 201.03(b). Alternatively, applicants may submit a new declaration naming the same inventive entity as the published international application.

CONCLUSION

The declaration is **NOT ACCEPTED**, without prejudice.

If reconsideration on the merits of this matter is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time are available under 37 CFR 1.136(a). Failure to timely reply will result in **ABANDONMENT** of this application.

Please direct any further correspondence with respect to this matter to the Assistant Commissioner for Patents, Mail Stop PCT, P.O. Box 1450, Alexandria, VA 22313-1450, and address the contents of the letter to the attention of the PCT Legal Office.



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